

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4101 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos.1 to 5 No.

ZAKIR HUSEIN MANJUR HUSAIN SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MISS.SIDDHI TALATI, ASSISTANT GOVERNMENT PLEADER

for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/12/98

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India, the detention order dated 6.5.1998 passed by the Commissioner of Police, Ahmedabad under section 3(2) of the prevention of Antisocial Activities Act, 1985 (for short PASA Act) is under challenge with further prayer that the petitioner be released from

illegal detention.

The Detaining Authority, the Commissioner of Police, Ahmedabad upon consideration of 2 cases registered against the petitioner under Prohibition Act, statement of two witnesses who requested not to disclose their identity and further considering the fact that in one of the prosecution cases registered against the petitioner he was absconding and he could not be arrested passed the impugned order with a view to prevent the antisocial bootlegging activity of the petitioner which was prejudicial for maintenance of public order.

This order has been challenged only on one ground that the representation of the petitioner was not considered by the State Government. The petitioner sent a representation dated 13.5.1998 through his Advocate to the Home Minister of the State of Gujarat. The affidavit of Shri J.R.Rajput, Under Secretary of the Government of Gujarat admits in para 2 that the petitioner's representation was received and forwarded to the Home Department on 13.5.1998. Upon scrutiny it was found that the representation was not bearing signature or thumb impression of the petitioner. Accordingly, it was returned to the Advocate of the detenu for compliance. Intimation to this effect was also sent to the detenu on the same day. However, no compliance was received thereafter. From this admission, it is clear that the representation of the detenu has not been considered by the State Government since 15.5.1998. The stand of the State Government insisting upon the detenu to furnish his signature or thumb impression on the representation was uncalled for. When the representation was sent by the Advocate under instructions from the detenu no further compliance was required and it should have been presumed that the representation was made by the Advocate under instructions from the detenu. The State Government was duty bound to consider it on merits and should not have delayed its disposal on untenable ground by returning the same to the Advocate of the petitioner for obtaining signature of the detenu. Such attitude of the concerned Government was not approved by the Apex Court in Balchand Chorasias Vs. Union of India, AIR 1978 SC Pg.297. Non consideration of representation by the State Government since 15.5.1998 is a cogent ground for quashing the impugned order.

No other point was pressed.

For the reasons stated above the petition succeeds on the only ground and attack which is hereby

allowed. The impugned order of detention dated 6.5.1998 contained in Annexure "A" to the petition is hereby quashed. The petitioner shall be released from custody forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt